

# 2016

# ILLINOIS

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## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Conditions of Grants for the Financing and Construction of Public Water Supply Facilities
- 2) Code Citation: 35 Ill. Adm. Code 661
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
661.101	Amendment
661.102	Amendment
661.201	Amendment
661.203	Amendment
661.302	Amendment
661.303	Amendment
661.305	Amendment
661.306	Amendment
661.307	Amendment
661.407	Amendment
661.502	Amendment
661.601	Amendment
661.705	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 4(k) and 4(x)(1) of the Illinois Environmental Protection Act [415 ILCS 5/4(k) and 415 ILCS 5/4(x)(1).]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments contain updates consistent with 415 ILCS 5/4(k) and 415 ILCS 5/4(x)(1). As required by the Act, the proposed amendments provide that the State's share of grant funding is subject to local matching requirements of the Act. Additionally, proposed amendments reflect provisions of the Illinois Grant Funds Recovery Act (30 ILCS 705) concerning grant funds within the State of Illinois.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No

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- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:
- Rex L. Gradeless  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield IL 62794-9276
- 217/782-5544  
Rex.Gradeless@Illinois.Gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed amendments have no effect on small businesses, small municipalities, and not for profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not require any new reporting, bookkeeping, or other procedures required for compliance.
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: 40 Ill. Reg. 9276; July 8, 2016.

The full text of the Proposed Amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE F: PUBLIC WATER SUPPLIES  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

## PART 661

GENERAL CONDITIONS OF GRANTS FOR THE FINANCING AND  
CONSTRUCTION OF PUBLIC WATER SUPPLY FACILITIES

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661.APPENDIX A	General Conditions of Construction Contract Document
661.APPENDIX B	Required Provisions (Engineering Agreements)
661.APPENDIX C	Procedures for Determination of Design Allowance

AUTHORITY: Implementing and authorized by Sections 4(k), 4(x)(1), and 4(x)(2) of the Illinois Environmental Protection Act [415 ILCS 5/4(k), 415 ILCS 5/4(x)(1), and 415 ILCS

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5/4(x)(2)].

SOURCE: Emergency rules adopted at 11 Ill. Reg. 19709, effective November 20, 1987, for a maximum of 150 days; adopted at 12 Ill. Reg. 8926, effective May 17, 1988; amended at 14 Ill. Reg. 2055, effective January 18, 1990; amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: INTRODUCTION

**Section 661.101 Purposes**

- a) ~~Sections 4(k), 4(x)(1), and 4(x)(2)~~~~Section 4(v)~~ of the Environmental Protection Act ~~[415 ILCS 5/4(k), 415 ILCS 5/4(x)(1), 415 ILCS 5/4(x)(2)]~~~~(Ill. Rev. Stat. 1986 Supp., ch. 111 1/2, par. 1004(v), as added by P.A. 85-288, effective September 8, 1987)~~ authorizes the Illinois Environmental Protection Agency ("Agency") *to distribute grants, subject to appropriation by the general assembly, to units of local government for financing and construction of public water supply facilities. With respect to all monies appropriated from the ~~Buildfund~~ Illinois ~~Bond Fund~~~~bond fund~~ or the ~~Buildfund~~ Illinois ~~Purposes Fund~~~~purposes fund~~ for public water supply grants, such grants shall be made in accordance with rules promulgated by the Agency.*
- b) The rules set forth in this Part constitute conditions ~~that~~~~which~~ apply to any grant to units of local government for financing and construction of public water supply facilities.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.102 Definitions**

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act.
- b) For purposes of this Part and 35 Ill. Adm. Code 660, the following definitions apply:

"Act" means the Environmental Protection Act ~~[(415 ILCS 5)]~~~~(Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1001 et seq., as amended)~~.

"Addenda" means written or graphic instruments issued prior to the

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execution of the agreement ~~that~~<sup>which</sup> modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.

"Agency" means the Illinois Environmental Protection Agency.

"Applicant" means grant applicant.

"Bid" means the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

"Bidder" means any person, firm or corporation submitting a bid for the work.

"Change order" means a written order to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

"Construction" means any one or more of the following: surveys, designs, plans, working drawings, specifications, erection, building, acquisition (of equipment, supplies, or components), alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

"Contract documents" means the contract, including advertisement for bid, information for bidders, bid, bid bond, agreements, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

"Contract price" means the total monies payable to the contractor under the terms and conditions of the contract documents.

"Contract time" means the number of calendar days stated in the contract documents for the completion of all the work including punch list items.

"Contractor" means the person, firm or corporation with whom the owner has executed a subagreement.

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"Director" means the Director of the Illinois Environmental Protection Agency.

"Drawings" means the part of the contract documents ~~that~~<sup>which</sup> show the characteristics and scope of the work to be performed and ~~that~~<sup>which</sup> have been prepared by or approved by the engineer based upon the engineer's professional ~~judgment~~<sup>judgement as defined in this subsection</sup>.

"Engineer" means the person, firm or corporation named as such in the contract documents.

"Field order" means a written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the engineer to the contractor during construction.

"Force account work" means work performed or a purchase made by a grantee in lieu of such work being performed or purchase being made by a person other than the grantee.

"Generally accepted accounting principles" or "GAAP" means procedures adopted by the Financial Accounting Standards Board (High Ridge Park, Stamford, Connecticut; June 1, 1987). (This incorporation contains no further amendments or editions.)

"Generally accepted auditing standards" means procedures adopted by the Auditing Standards Board (Codification of Statements on Auditing Standards; 1211 Avenue of the Americas, New York City, New York; January 1986) (This incorporation contains no further amendments or editions).

"Grant" means a grant under Section ~~4(x)(1)~~<sup>4(v)</sup> of the Act.

"Grant agreement" means the written agreement between the Agency and a grant recipient (applicant) in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grant applicant" means the unit of local government which has applied for a grant under Section ~~4(x)(1)~~<sup>4(v)</sup> of the Act.

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"Grantee" or "Owner" means the unit of local government which has received a grant under Section ~~4(x)(1)4(v)~~ of the Act.

"Grant procedures" means the procedures for issuing grants under Section ~~4(x)(1)4(v)~~ of the Act.

"Initiation of operation" means the date specified by the grant recipient on which use of the project begins for the purposes that it was planned, designed, and built.

"Notice of award" means the written notice of the acceptance of the bid from the owner to the successful bidder.

"Notice to proceed" means written communications issued by the owner to the contractor authorizing him to proceed with the work and establishing the date of commencement of the work.

"Professional ~~judgment~~judgement" means the use of those engineering principles and practices used by engineers when fulfilling their requirements and duties consistent with the specific requirements of this Part and as certified by a Professional Engineer licensed under the Illinois Professional Engineering Act (~~[225 ILCS 325]Ill. Rev. Stat. 1985, ch. 111, par. 5101 et seq.~~).

"Project" means the undertaking to be performed as provided in the grant agreement.

"Resident project representative" means the authorized representative of the owner who is assigned to the project site or any part ~~of the project~~ site thereof.

"Responsible bidder" means a bidder who meets all of the criteria for responsibility established by the grantee or contractor in the invitation for bid or proposal and, in addition, meets all of the criteria set forth in Section 661.301(j)(1).

"Responsive bidder" means a bidder who complies with the invitation for bid or proposal in all material respects as to the method, substance, and timeliness of submission.

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"Shop drawings" means all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the contractor, subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.

"Specifications" means a part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

"Subagreement" means a written agreement between the grant recipient and another party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

"Subcontractor" means an individual, firm, or corporation having a direct contract with the contractor or with any other subcontractor for the performance of a part of the work.

"Substantial completion" means the date ~~as~~ certified by the engineer when the construction of the project or a specified part of the project ~~thereof~~ is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purpose for which it is intended.

"Supplier" means any person or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.

"Unit of local government" means a county, municipality, township, municipal or county water or utility authority, municipal public water district, improvement authority or, municipal subdivision whose primary purpose is to construct, operate and maintain public water supply facilities.

"Work" means all labor necessary to produce the construction required by the contract documents, and all materials and equipment incorporated or to be incorporated in the project.

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"Written notice" means any notice to any party of the agreement relative to any part of this agreement in writing. Written notice shall be considered delivered and the service ~~of that notice~~<sup>thereof</sup> completed, when posted by certified or registered mail to the said party at ~~his or her~~<sup>his</sup> last given address, or delivered in person to said party or ~~his or her~~<sup>his</sup> authorized representative on the work.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE  
TO COMPLY WITH GRANT CONDITIONS

**Section 661.201 Noncompliance with Grant Conditions**

- a) In the event of noncompliance with any condition imposed pursuant to a grant, the Director shall take one or more of the following actions:
- 1) Commence legal action in a court of competent jurisdiction (e.g., to obtain an injunction or to recover in fraud);
  - 2) Annul the grant and recover all grant funds pursuant to the Illinois Grant Funds Recovery Act (~~30 ILCS 705~~<sup>Ill. Rev. Stat. 1985, ch. 127, par. 2301 et seq.</sup>);
  - 3) Terminate the grant pursuant to Section 661.203;
  - 4) Suspend all or part of the project work pursuant to Section 661.202; or
  - 5) Take ~~such~~ other action as provided by law, including, but not limited to, reducing the amount of the grant by the amount of misused funds or disallow costs in accordance with Section 661.701.
- b) No action shall be taken under this general condition without prior consultation with the applicant.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.203 Termination**

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## a) Grant Termination by Agency

The Agency, by written notice and after consultation with the grantee, may terminate the grant. Cause for termination shall include, but not be limited to: default (inability or unwillingness to perform under this Part) by the grantee, failure by the grantee to comply with the terms and conditions of the grant, lack of adequate funding, or advancements in the state of the art. Upon ~~such~~ termination, the grantee shall refund to the State of Illinois any unexpended grant funds, except ~~that such~~ portion ~~thereof as may be~~ required by the grantee to make payment for materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination and further provided that ~~those such~~ costs are otherwise allowable under Section 661.701 and under the conditions of this grant.

## b) Project Termination by Grantee

The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include, but not be limited to, realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancement in the state of the art. If the Agency finds that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective with the date of termination of the project by the grantee. Any termination agreement shall include special conditions for the termination of the grant. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State of Illinois ~~as final settlement~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

**Section 661.302 Construction Contracts of Grantee**

- a) This Section shall apply to construction contracts (subagreements) awarded by the grantee.
- b) The project work shall be performed under one or more contracts awarded by the

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grantee to private firms, except for force account work authorized by the Agency under Section 661.301(i).

- c) Each contract shall be either a fixed-price (lump-sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Agency gives advance written approval (based upon the Agency's professional judgment as defined in Section 661.102(b)) for the grantee to use some other acceptable type of contract (such as, but not limited to, per diem contracts as discussed under Section 661.303(b)(5)). The cost-plus-a-percentage-of-cost type of contract shall not be used.
- d) For each construction contract to be awarded by the grantee, the grantee shall require a:
  - 1) Bid bond for 5% of the bid price;
  - 2) Performance bond for 100% of the contract price; and
  - 3) Payment bond for 100% of the contract price.
- e) The grantee must obtain written Agency approval prior to formal advertising. The Agency shall provide ~~such~~ approval if the grantee has complied with this Part and the conditions of the grant. Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 661.301(1). Formal advertising shall be in accordance with the following:
  - 1) Adequate public notice  
The applicant will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation statewide, inviting bids on the project work, and stating the method by which bidding documents may be obtained and examined. ~~When~~~~Where~~ the estimated prospective cost of construction is ten million dollars or more, ~~thesuch~~ notice must be published in trade journals of nationwide distribution. The applicant must in addition solicit bids directly from bidders, if it maintains a bidders list.
  - 2) Adequate time for preparing bids  
Not less than 30 days must be allowed between the date when public notice pursuant to subsection (e)(1) is first published and the date by

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which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when ~~the~~<sup>such</sup> notice is first published.

- 3) Adequate bidding documents
- Bidding documents (invitations for bid) shall be prepared by the grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying by any party. ~~The~~<sup>Such</sup> bidding documents shall include:
- A) A complete statement of the work to be performed, including necessary drawings and specifications, and a completion schedule. Drawings and specifications may be made available for inspection instead of being furnished;
  - B) The terms and conditions of the contract to be awarded;
  - C) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;
  - D) A copy of all the general conditions, special conditions, assurances, agreements, and terms of the grant;
  - E) Responsibility requirements or criteria ~~that~~<sup>which</sup> will be employed in evaluating bidders; provided, that an experience requirement may not be utilized unless justified under Section 661.301(h)(4);
  - F) The following statement:

"Any contract awarded under this Invitation for Bids is expected to be funded in part by a grant from the State of Illinois. Neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract.";
  - G) A copy of subsection (e)(3)(H) shall be in the proposal form to be used by bidders and shall constitute a representation and

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certification to be considered part of the bid. The grantee shall not award any contract to a bidder who has deleted or modified the language contained in subsection (e)(3)(H), as set forth in the proposal form;

H) By submission of the bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:

i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to ~~thesuch~~ prices with any other bidder or with any competitor;

ii) Unless otherwise required by law, the prices ~~thatwhich~~ have been quoted in the bid have not knowingly been disclosed by the bidder, prior to opening, directly or indirectly to any other bidder or to any competitor; and

iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition; and

I) Each person signing the bid shall certify that:

i) He or she is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (e)(3)(H); or

ii) He or she is not the person in the bidder's organization responsible within that organization for the decision as to the prices being bid, but that he or she has been authorized to act as agent for the persons responsible for ~~thesuch~~ decision in certifying that ~~theysuch persons~~ have not participated, and will not participate, in any action contrary to subsection (e)(3)(H), and as their agent shall so certify;

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and shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (e)(3)(H).

- 4) **Sealed Bids**  
The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.
- 5) **Amendments to bidding documents**  
If the grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time. The period for submission of bids shall be extended when necessary to assure fair and open competition.
- 6) **Bid modifications**  
A firm that which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.
- 7) **Public opening of bids**  
The grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.
- 8) **Award to the low responsive, responsible bidder.**
  - A) After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents.
  - B) The grantee may reserve the right to reject all bids. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the grantee. The Agency's approval shall be based upon a review of the bidding documents, and the grantee's recommendation, for compliance with the grant conditions and this Part.

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- | C) If award is intended to be made to a firm ~~that~~which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or not responsible.
  - | D) Local laws, ordinances, regulations or procedures ~~that~~which are designed or operate to give local or in-state bidders preference over other bidders shall not be employed in evaluating bids.
- f) Negotiations of contract amendments (change orders)
- 1) Grantee responsibility  
The grantee is responsible for negotiation of construction contract change orders. This function may be performed by the grantee directly or by the consulting engineer, if authorized by the grantee.
    - A) During negotiations the grantee shall:
      - i) Provide the contractor with a detailed description of the scope and extent of work to be performed;
      - | ii) Require the contractor to demonstrate that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
      - iii) Require a fair and reasonable price for the work.
    - B) For each change order the grantee shall maintain a written summary of all negotiations and an independent cost estimate prepared by the grantee's consulting engineer.
  - 2) Changes in contract price or time  
The contract price or time may be changed only by a change order. Negotiations shall be conducted in accordance with this subsection (f). The value of any work covered by a change order, or the value of claim for increases or decreases in the contract price, shall be determined by whichever method set forth in this subsection(f)(2)~~below~~ is the most advantages to the grantee:
    - |

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## A) Unit prices

- i) Original bid items: Unit prices set forth in the original bid are acceptable for pricing change orders. However, when changes in quantities exceed 15% ~~percent~~ of the original bid quantity, the unit price shall be reviewed by the grantee to determine if a new unit price should be negotiated.
- ii) New items: Unit prices of new items shall be negotiated.

## B) A lump sum to be negotiated.

## C) Cost reimbursement

The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.

- 3) For each change order, the contractor shall submit to the grantee cost and pricing data to enable the grantee to determine if the costs are fair and reasonable. ~~The Such~~ data shall include:

- A) As a minimum, proposed change order costs shall be presented in summary format as prescribed by the Agency and shall be supported by a certification executed by the contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the data of the change order.
- B) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price change orders and a specific total dollar amount of profit will be set forth separately in the cost summary for cost reimbursement change orders.
- C) More detailed cost data than that set forth by the summary format may be required to enable the grantee to determine if the costs are fair and reasonable.

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- D) For costs under cost reimbursement change orders, the contractor shall have an accounting system ~~that~~<sup>which</sup> accounts for ~~thesueh~~ costs in accordance with ~~GAAP~~<sup>generally accepted accounting principles</sup>. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable change orders. The contractor shall propose and account for allowable change order costs in a manner consistent with ~~thesueh~~ accounting procedures.
- E) Change orders awarded on the basis of review of a cost element summary and a certification of complete, current, and accurate cost pricing data shall be subject to downward renegotiation or recoupment of funds ~~when~~<sup>where</sup> subsequent audit pursuant to this Part substantiates that ~~thesueh~~ certification was not based on complete, current and accurate cost and pricing data and on costs allowable under these regulations at the time of the change order execution.
- 4) Agency review  
For any change order, the grantee shall submit the following to the Agency for review to determine compliance with this Part:
- A) The cost and pricing data submitted by the contractor;
- B) A certification of review and acceptance of the contractor's cost or price; and
- C) A copy of the change order with a justification describing the need and reasonableness of the change order.
- 5) Profit  
For the purpose of negotiated change orders to construction contracts under Agency grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. The estimate of profit is to be reviewed by the grantee as are all other elements of price.
- 6) Allowability  
Allowability of costs for change orders shall be determined in accordance

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with Section 661.701.

- g) Progress payments to contractors
- 1) Policy  
Except as may be otherwise required by law, prompt progress payments shall be made by grantees to prime contractors and by prime contractors to subcontractors and suppliers for eligible construction, material, and equipment costs, including those of undelivered specifically manufactured equipment, incurred under a contract under an Agency construction grant.
  - 2) Protection of progress payments made for specifically manufactured equipment  
The grantee shall assure protection of the State's interest in progress payments made for specifically manufactured equipment. This protection must be in a manner or form acceptable to the grantee and shall take the form of recordation under the Uniform Commercial Code (~~{~~[810 ILCS 5](#)~~}~~~~Ill. Rev. Stat. 1987, ch. 26, pars. 1-101 et seq., as amended~~), adequate to protect the interest of the grantee and the State.
  - 3) Limitations on progress payments  
In no case may progress payments for undelivered equipment or items be made in any amount greater than ~~75%seventy five percent~~ of the cumulative incurred costs allocable to contract performance with respect to the undelivered equipment or items. Submission of a request for any ~~such~~ progress payments shall be accompanied by a certification furnished by the fabricator of the equipment or item that the amount of progress payment claimed constitutes not more than ~~75%seventy five percent~~ of cumulative incurred costs allocable to contract performance, and in addition, in the case of the first progress payment request, a certification that the amount claimed does not exceed ~~15% percent~~ of the contract or item price quoted by the fabricator.
  - 4) A subcontractor or supplier ~~that~~~~which~~ is determined by the Agency to have frustrated the intent of the provisions regarding progress payments for major equipment or specifically manufactured equipment through failure to deliver the equipment shall be determined nonresponsible.
  - 5) Contract provisions

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Appropriate provisions regarding progress payments must be included in each contract and subcontract.

- 6) The foregoing progress payments policy shall be implemented in invitations for bids under construction grants.

h) Retention from progress payments

- 1) The grantee may retain a portion of the amount otherwise due the contractor. Except as provided in subsection (h)(1)(D), the amount retained by the grantee shall be limited to the following:
- A) The withheld amounts shall be not more than 10% ~~percent~~ of the payment claimed until the work is 50% ~~percent~~ complete.
  - B) When work is 50% ~~percent~~ complete, the withheld amount shall be reduced to 50% ~~percent~~ of the dollar value of all work satisfactorily completed to date if the contractor is making satisfactory progress and there is no specific cause for greater withholding (as determined by the grantee).
  - C) When the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5% ~~percent~~ to only the amount necessary to assure completion.
  - D) The grantee may reinstate up to 10% ~~percent~~ withholding if the grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for withholding (as determined by the grantee).
- 2) The foregoing retention policy shall be implemented with respect to all construction projects for which plans and specifications are approved. Appropriate provision to assure compliance with this policy shall be included in the bid documents for such projects initially or by addendum prior to the bid submission date, and as a special condition in the grant agreement or in a grant amendment.
- 3) A grantee who delays disbursement of grant funds shall be required to credit to the State all interest earned on those funds.

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- i) Required construction contract provisions  
Each construction contract shall include the "General Conditions of Construction Contract Document" as set forth in Appendix A. In addition, each construction contract shall include the following provisions:
- 1) Audit; access to records:
- A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on grant work under this agreement in accordance with generally accepted accounting principles and with American Institute of Certified Public Accountants' Professional Standards (666 Fifth Avenue, New York City, New York 10019; June 1, 1987). (This incorporation contains no later amendments or editions.). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of any cost submissions required under subsection (f) ~~of this Section~~ and a copy of the cost summary submitted to the owner. The Auditor General, the owner, the Agency, or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.
- B) If this contract is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to include the language set forth in subsection (i)(1) in all contract amendments or negotiated change orders in excess of \$10,000, which affect the contract price. In the case of all other prime contracts, the contractor agrees to include language set forth in Section 661.303(i)(1) in all his contracts and all tier subcontracts or change orders ~~thereto~~ directly related to project performance ~~that~~which are in excess of \$10,000.
- C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
- D) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection

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(i)(1)(A). ~~When~~~~Where~~ the audit concerns the contractor, the auditing agency will afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

- E) Records under subsection (i)(1)(A) shall be maintained and made available pursuant to Section 661.501 during performance on Agency grant work under this agreement and until three years from the date of final grant payment for the project. In addition, those records ~~that~~~~which~~ relate to any dispute or litigation or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of ~~that~~~~such~~ dispute, appeal, litigation, claim, or exception.

2) Price reduction for defective cost or pricing data-

- A) This clause is applicable only to:
- i) any negotiated prime contract in excess of \$10,000;
  - ii) negotiated contract amendments or change orders affecting the price of a formally advertised, competitively awarded fixed price contract; or
  - iii) any subcontract or purchase order under a prime contract other than a formally advertised, competitively awarded, fixed price contract.
- B) This clause is not applicable for contracts or subcontracts to the extent that they are awarded on the basis of effective price competition.
- C) If the Agency determines that any price (including profit) negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant sums because the contractor or any subcontractor furnished

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incomplete or inaccurate costs or pricing data or data not current as certified in his certification of current cost or pricing data, then ~~thatsueh~~ price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect ~~thesueh~~ reduction.

D) Failure to agree on a reduction shall be subject to 35 Ill. Adm. Code 661. Appendix A, Article 30.

3) Covenant against contingent fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty the owner shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of ~~thesueh~~ commission, percentage, brokerage, or contingent fee.

4) Gratuities

A) The owner shall, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing, by the owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor or any agent or representative of the contractor, to any official or employee of the owner or of the State of Illinois with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this contract: ~~provided~~Provided, that if the existence of the facts upon which the owner makes such findings are in issue, they shall be reviewed in proceedings pursuant to 35 Ill. Adm. Code 661. Appendix A, Article 30.

B) In the event this contract is terminated as provided in subsection (i)(4)(A) the owner shall be entitled to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor.

C) The rights and remedies of the owner provided in this clause shall

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not be exclusive and are in addition to any rights and remedies provided by law or under this contract.

- j) Subcontracts under construction contracts  
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by ~~the~~such prime contractor in awarding or executing ~~such~~ subcontracts shall comply with all provisions of federal, State and local law, including but not limited to all provisions set forth in this Part relating to:
- 1) Fraud and other corrupt practices; and
  - 2) Access to facilities and records, and audit of records.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.303 Contracts for Personal and Professional Services - Consulting Engineering Agreements**

- a) Scope of Application  
The provisions of subsections (a) through (i) apply to all subagreements of grantees for architectural or engineering services ~~in which~~where the aggregate amount of services involved is expected to exceed \$10,000. When \$10,000 or less of services (e.g., for consultant or consultant subcontract service) is required, the provisions of Section 661.301(m) shall apply.
- b) Type of Contract (Subagreement)
- 1) General  
Cost reimbursement, fixed price or per diem types of contracts or combinations ~~of those contracts~~thereof may be negotiated for architectural or engineering services.
  - 2) Contracts prohibited  
The cost-plus-percentage-of-cost and the percentage-of-construction-cost types of contract are prohibited.
  - 3) Fixed price contracts  
A fixed price contract is one ~~that~~which established a guaranteed maximum

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price ~~that~~which may not be increased except to the extent that a contract amendment increases the scope of work. A fixed price contract may be used only if the scope and extent of work to be performed are clearly defined.

- 4) Cost reimbursement contracts  
Each cost reimbursement contract must clearly establish a cost ceiling ~~that~~which the engineer may not exceed without formally amending the contract and a fixed dollar profit ~~that~~which may not be increased except in case of a contract amendment which increases the scope of the work.
- 5) Per diem contracts  
Per diem agreements should be used only when the first task under the grant involves establishing the scope and cost of succeeding tasks, or for incidental services, such as expert testimony or other intermittent or professional services. Resident engineer and resident inspection services shall be compensated under a fixed price contract or a cost reimbursement contract as described in subsections (b)(3) and (b)(4), respectively.
- 6) Compensation procedures  
If, under either a cost reimbursement or fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:
  - A) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;
  - B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles set forth in Section 661.701;
  - C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; and
  - D) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work: the cost reimbursement contract includes a fixed dollar profit ~~that~~which may not be increased except in a case of a contract amendment ~~that~~which increases the scope of work.

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## c) Negotiation

- 1) Grantees are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement, including negotiation, may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose.
- 2) Negotiation shall be conducted in accordance with State and local laws. If State laws conflict with this Part, State laws shall take precedence over this Part. This Part shall have precedence over local ordinances.
- 3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proceed contract. The grantee and the candidate shall discuss, at a minimum:
  - A) The scope and extent of work;
  - B) Identification of the personnel and facilities to accomplish the work within the required time, including where needed, employment of additional personnel, subcontracting, joint ventures, etc;
  - C) Provision of the required technical services in accordance with regulations and criteria established for the project; and
  - D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in subsections (d) and (e), and payment provisions.

## d) Cost and Price Considerations:

- 1) General  
It is the policy of the Agency that the cost and price of all subagreements and amendments to those subagreements~~thereto~~ must be considered. For each subagreement in excess of \$10,000, but not greater than \$100,000, grantees shall use the procedures described in subsection (g)(3) or an equivalent process.

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- 2) Subagreements over \$100,000  
For each subagreement expected to exceed \$100,000, or for two subagreements ~~that which~~ aggregate more than \$100,000 awarded to an engineer for work on one project, or ~~when the where~~ renegotiation or amendment itself is in excess of \$100,000, the provisions of this subsection (d)(2) shall apply.
- A) The ~~candidate~~~~candidate(s)~~ selected for negotiation shall submit to the grantee cost and pricing data described in subsection (d)(3) to enable the grantee to determine if the costs are fair and reasonable.
- B) The grantee shall submit to the Agency for review:
- i) The cost and pricing data submitted by the selected engineer;
  - ii) A certification of review and acceptance of the selected engineer's cost or price; and
  - iii) A copy of the proposed subagreement document.
- C) The Agency will review the complete subagreement action and approve the grantee's compliance with this Part prior to the award of the subagreement. The grantee shall be notified upon completion of the review.
- 3) Cost Review
- A) A review of proposed subagreement costs shall be made by the grantee.
- B) As a minimum, proposed subagreement costs shall be presented in summary format prescribed by the Agency and shall be supported by a certification executed by the selected engineer that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.
- C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed

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price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

- D) More detailed cost data than that set forth in the summary format may be required to enable the grantee to determine if the costs are fair and reasonable.
- E) The engineer's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and in accordance with this Part.
- F) The engineer shall have an accounting system which accounts for costs in accordance with ~~GAAP~~generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects in accordance with Section 661.701. The engineer must propose and account for costs in a manner consistent with ~~their~~this normal accounting procedures.
- G) Subagreements awarded on the basis of review of a cost element summary and a certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that ~~the~~such certification was not based on complete, current and accurate cost and pricing data at the time of award.

- e) Profit  
The objective of negotiations shall be the determination of a fair and reasonable profit as defined in Section 661.301(c). For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Where cost review is performed, the estimate of profit should be reviewed by the grantee as are all other elements of price.
- f) Award of Subagreement  
After the close of negotiations and after review and approval by the Agency if required pursuant to subsection (d)(2), the grantee may award the contract. Unsuccessful candidates should be notified promptly.

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- g) Required Solicitation and Subagreement Provisions:
- 1) Required solicitation statement
    - A) Requests for qualification or proposals must include the following statement, as well as the proposed terms of the subagreement.

"Any contract or contracts awarded under this request for (qualifications/professional proposals) are expected to be funded in part by a grant from the Illinois Environmental Protection Agency. This procurement will be subject to the requirements of the grant offer."
    - B) Neither the State of Illinois nor the Illinois Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.
  - 2) Content of subagreement
    - A) Each subagreement must define:
      - i) The scope and extent of project work;
      - ii) The time for performance and completion of the contract work, and dates for completion of significant project tasks;
      - iii) Personnel and facilities necessary to accomplish the work within the required time;
      - iv) The extent of subcontracting and consultant agreements.
    - B) If any of these elements cannot be defined adequately for later tasks at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.
  - 3) Required subagreement provisions  
Each consulting engineering contract must include the provisions set forth

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in Appendix B. The grant will not be awarded unless each consulting engineering contract includes the provision set forth in Appendix B.

- h) Subagreement Payments - Architectural or Engineering Services:
  - 1) Grantee payments to consulting engineers for work done during construction will be made periodically throughout the construction period.
  - 2) Upon satisfactory completion by the engineer of the work called for under the terms of a contract, and upon acceptance of ~~that~~such work by the grantee, with the concurrence of the Agency based upon the Agency's professional judgment as defined in Section 661.102(b), the engineer will be paid the unpaid balance of any money due for ~~that~~such work, including any retained percentages relating to this portion of the work.
  - 3) Payment may not be withheld for professional services, except as provided in the contract for professional services. Any withholding should be limited to only that amount necessary to assure contract compliance.
- i) Subcontracts under subagreements for architectural or engineering services
  - 1) The award or execution of subcontracts under a prime contract for architectural or engineering services awarded to an engineer by a grantee, and the procurement and negotiation procedures used by the engineer in awarding ~~such~~ subcontracts are not required to comply with any of the provisions selection procedures, policies or principles set forth in Section 661.301 or Section 661.303, except those specifically stated in subsection (i)(2).
  - 2) The award or execution of subcontracts in excess of \$10,000 under a prime contract for architectural or engineering services and the procurement procedures used by the engineer in awarding such subcontracts must comply with the following:
    - A) Section 661.301(a), (Local preference);
    - B) Section 661.303(d), (Cost and Price Considerations); and
    - C) Section 661.303(e), (Profit).

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(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.305 Compliance with Procurement Requirements**

## a) Grantee responsibility

The grantee is responsible for selecting the low, responsive, and responsible bidder or other contractor in accordance with ~~State~~ or local laws or ordinances, and the grant agreement directly affecting procurement, and for the initial resolution of complaints based upon alleged violations. The grantee shall promptly determine each ~~such~~ complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected to state in writing or at a conference the basis for his ~~or her~~ views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination.

## b) Arbitration

Disputes between the grantee and any party adversely affected by the determination of the grantee made pursuant to subsection (a) shall be resolved by binding arbitration by a single arbitrator, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (140 W. 51st Street, N.Y., N.Y., 10020, 1986). (This incorporation contains no further amendments or editions.) This agreement to arbitrate shall be specifically enforceable under the Uniform Arbitration Act (~~[710 ILCS 5] Ill. Rev. Stat. 1985, ch. 10, par. 101 et seq.~~). The award rendered by the arbitrator shall be final, and ~~judgment~~ ~~judgement~~ may be entered upon it in any court having jurisdiction thereof. A copy of the arbitration award shall be provided to the Agency immediately upon its issuance.

## c) Time limitations

Complaints under subsection (a) shall should made in writing to the grantee, with a copy to the Agency, as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process. A complaint authorized by subsection (a) must be mailed by certified mail (return receipt requested), or delivered, to the grantee, with a copy to the Agency, no later than five working days after the bid opening. A request for arbitration pursuant to subsection (b) must be made to the American

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Arbitration Association within one week after the complaining party received the grantee's adverse determination.

- d) Deferral of procurement action  
| ~~When~~Where the grantee has received a written complaint pursuant to subsection  
(a), it must defer issuance of its solicitation or award or notice to proceed under  
the contract (as appropriate) for ten days after mailing or delivery of any written  
adverse determination. If a determination is made by either the grantee or the  
| arbitrator ~~that~~which is favorable to the complainant, the terms of the solicitation  
must be revised or the contract must be awarded (as appropriate) in accordance  
| with ~~this~~such determination.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.306 Disputes**

- a) Only the grantee may appeal to the Agency under this provision with respect to its  
| subagreements ~~thereunder~~ for its own name and benefit. Neither a contractor nor a  
subcontractor of a grantee may prosecute an appeal under the disputes provision  
of a grant in its own name or interest.
- b) Any dispute arising under this grant ~~that~~which is not disposed of by agreement  
shall be decided by the Director or ~~the Director's~~his duly authorized  
representative, who shall reduce his ~~or her~~ decision to writing and mail or  
| otherwise furnish a copy ~~thereof~~ to the applicant. The decision of the Director  
shall be based upon the application of State law and this Part to the fact presented  
by the Agency and the grantee. The decision of the Director shall be final and  
conclusive.
- c) This ~~Section "disputes" clause~~ does not preclude consideration of questions of law  
| in connection with decisions provided for in subsection (b).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 661.307 Indemnity**

The grantee shall assume the entire risk, responsibility and liability for any and all loss or  
damage to property owned by the grantee, the Agency or third persons, and any injury to or  
death of any persons (including employees of the grantee) caused by, arising out of, or occurring

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in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, ~~hold~~save harmless and defend the State of Illinois and the Agency from all claims for any ~~such~~ loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act [740 ILCS 35]"AN ACT in relation to indemnity in certain contracts" (Ill. Rev. Stat. 1985, ch. 29, par. 61 et seq.). The grantee shall ~~require~~required that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of ~~the~~such contract or satisfaction of any and all claims arising under the contract~~thereunder~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION,  
AMENDMENT, COMPLETION AND OPERATION OF PROJECT

**Section 661.407 User Charges**

- a) Each applicant must develop a system of user charges prior to grant approval. The system of user charges must be enacted and enforced prior to initiation of operation of the project for which the grant was awarded.
- b) The user charge system shall be consistent with the following criteria:
  - 1) The user charge system must generate sufficient revenue to offset the cost of all public water supply operation, maintenance and replacement of all equipment with a replacement life of less than 20 years required to be provided by the grantee.
  - 2) The user charge system must be enacted into law.
  - 3) For the first year of operation of new facilities, operation, maintenance, and replacement costs shall be based upon experience for the existing public water supply or shall be based upon a cost estimate provided by the grantee's engineer.
  - 4) The grantee shall review user charges annually and revise the rates periodically to reflect actual public water supply operation, maintenance, and replacement costs.

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- c) Upon a written determination by the Agency that the grantee's system of user charges complies with the conditions of the grant and this Part, the implementation and maintenance of the approved system and the implementation schedules ~~therefore~~ shall become a condition of the grant subject to the provisions of Section 661.201.
- d) The grantee must maintain such records as are necessary to document such compliance. The grantee shall maintain such records in accordance with the provisions of the Local Records Act (~~[50 ILCS 205]Ill. Rev. Stat. 1985, ch. 116, pars. 43-101 et seq.~~), except that no ~~such~~ records may be destroyed for a period of 30 years unless microfilm reproduction ~~is~~are made.
- e) The Agency or any authorized representative shall have access to any books, documents, papers, and records of the grantee ~~that~~which are applicable to the grantee's systems of user charges for the purpose of making audit, examination, excerpts, and transcriptions ~~thereof~~ to ensure compliance with the provisions of subsection (b).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART E: REQUIREMENTS APPLICABLE TO  
ACCESS, AUDITING, AND RECORDS

**Section 661.502 Audit and Records**

- a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to GAAP~~generally accepted accounting principles~~ to properly account for:
- 1) The receipt and disposition by the grantee of all assistance received for the project, including both State assistance and any matching share or cost sharing; and
  - 2) The costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project, for which the grant has been awarded. The foregoing ~~constitutes~~constitute "records" for the purposes of this condition.
- b) The grantee's facilities, or ~~such~~ facilities as may be engaged in the performance of

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the project for which grant has been awarded, and the grantee's records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 661.501.

- c) The grantee shall preserve and make his or her records available to the Agency or any authorized representative:
  - 1) Until expiration of 3 years from the date of final payment under this grant, and
  - 2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by subsections (d) or (e).
- d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.
- e) Records ~~that~~which relate to appeals under the Section 661.306, litigation or the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives, shall be retained until all~~sueh~~ appeals, litigation, claims, or exceptions have been disposed.
- f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Section after 10 days' written notice from the Agency, shall be cause for termination of the grant, pursuant to Section 661.203, and refund to the State of Illinois of any unexpended grant funds in the hands of the grantee, and in addition ~~thereto~~, refund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: INCORPORATED REQUIREMENTS

**Section 661.601 Statutory Conditions**

- a) All grants are awarded subject to State law, including but not limited to the requirements of the following Illinois statutes:

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- 1) The Illinois Architecture Act of 1989 (~~[225 ILCS 305]~~Ill. Rev. Stat. 1985, ch. 111, par. 1201 et seq.) relating to the practice of architecture.
- 2) The Adjacent Landowner Excavation Protection Act"~~AN ACT to prescribe the duty of an owner or occupant of lands upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon~~" (~~[765 ILCS 140]~~Ill. Rev. Stat. 1985, ch. 111 1/2, Par. 3301 et seq.) relating to the duty of an owner or occupant of land upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures on those lands~~thereon~~.
- 3) Section 18f of the Rivers, Lakes, and Streams Act"~~AN ACT in relation to the regulation of the rivers, lakes and streams of the State of Illinois~~" (~~[615 ILCS 5/18f]~~Ill. Rev. Stat. 1985, ch. 19, par. 65f) relating to flood plains.
- 4) The Public Construction Bond Act"~~AN ACT in relation to bonds of contractors entering into contracts for public construction~~" (~~[30 ILCS 550]~~Ill. Rev. Stat. 1985, ch. 29, par. 15 et seq.) relating to bonds of contractors entering into contracts for public construction.
- 5) The Public Works Employment Discrimination Act"~~AN ACT to prohibit discrimination and intimidation on account of race, creed, color, sex, religion, physical or mental handicap unrelated to ability, or national origin in employment under contracts for public buildings or public works~~" (~~[775 ILCS 10]~~Ill. Rev. Stat. 1985, ch. 29, par. 17 et seq.) relating to the prohibition of discrimination and intimidation on account of race, creed, color, sex or national origin in employment under Contracts for Public Works.
- 6) The Prevailing Wage Act"~~AN ACT regulating wages of laborers, mechanics and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by any one under contract for public works~~" (~~[820 ILCS 130]~~Ill. Rev. Stat. 1985, ch. 48, par. 39s-1 et seq.) relating to the regulation of laborers, mechanics and other workmen employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract

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for public works.

- 7) The Health and Safety Act (~~[820 ILCS 225]Ill. Rev. Stat. 1985, ch. 48, par. 137.1 et seq.~~) relating to the health and safety of persons employed and vesting in the Workers' Compensation Commission~~industrial commission~~ power to make reasonable rules relating to health and safety~~thereto~~.
- 8) The Workers' Compensation Act (~~[820 ILCS 305]Ill. Rev. Stat. 1985, ch. 48, par. 138.1 et seq.~~) relating to providing compensation for accidental injuries or death suffered in the course of employment within this State, and outside~~without~~ the State when~~where~~ the contract of employment is made within this State.
- 9) The Medical Examination of Employees Act"~~AN ACT forbidding employers to require employees or applicants for employment to pay the cost of medical examinations required as a condition of employment"~~ (~~[820 ILCS 235]Ill. Rev. Stat. 1985, ch. 48, par. 172d et seq.~~) relating to forbidding employers to require employees or applicants for employment to pay the cost of medical examinations required as a condition of employment.
- 10) The Workers' Occupational Diseases Act (~~[820 ILCS 310]Ill. Rev. Stat. 1985, ch. 48, par. 172.36 et seq.~~) relating to providing remedies for injuries suffered or death resulting from occupational diseases incurred in the course of employment.
- 11) The Employment of Illinois Workers on Public Works Act"~~AN ACT concerning the distribution of certain federal grants and the employment of Illinois workers"~~ (~~[30 ILCS 570]Ill. Rev. Stat. 1985, ch. 48, par. 2201 et seq.~~) relating to employment of Illinois laborers only during periods of excessive unemployment in Illinois.
- 12) The Illinois Professional Engineering Practice Act of 1989 (~~[225 ILCS 325]Ill. Rev. Stat. 1985, ch. 111, par. 5101 et seq.~~) relating to the practices of professional engineering.
- 13) The Notice By Publication Act"~~AN ACT to revise the law in relation to notices"~~ (~~[715 ILCS 5]Ill. Rev. Stat. 1985, ch. 100, par. 1 et seq.~~) relating

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to publication of notices.

- 14) Sections 3 and 4 of the Public Officer Prohibited Activities Act ~~"AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers" ([50 ILCS 105/3 and 50 ILCS/4]~~ Ill. Rev. Stat. 1985, ch. 102, pars. 3 and 4) relating to the prevention of fraudulent and corrupt practices in the making or accepting of contracts by public officers.
  - 15) The Open Meetings Act ~~([5 ILCS 120]~~ Ill. Rev. Stat. 1985, ch. 102, par. 41 et seq.) relating to meetings.
  - 16) The Environmental Protection Act ~~([415 ILCS 5]~~ Ill. Rev. Stat. 1985, ch. 111 1/2, par. 1001 et seq.) and regulations thereunder.
  - 17) The ~~Illinois~~ Structural Engineering Practice Act of 1989 ~~([225 ILCS 340]~~ Ill. Rev. Stat. 1985, ch. 111, par. 6501 et seq.) relating to the practice of structural engineering.
  - 18) The Illinois Grant Funds Recovery Act [30 ILCS 705] concerning grant funds in the State of Illinois.
- b) The grantee is solely responsible for assuring compliance with all applicable federal and ~~State~~ state statutory and regulatory requirements.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART G: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

**Section 661.705 Maximum Grant Share**

- a) ~~The~~ Except as provided in subsection (b), the total percentage of State grant funding for allowable project costs, as described in Section 661.701 ~~660.701~~, is subject to any local match requirements set forth in the Act ~~will not exceed 70 percent.~~
- b) If the monies appropriated for the grant are from a source other than the Build Illinois Fund or the Build Illinois Purposes Fund, and ~~that such~~ that appropriation expressly states a specific percentage of State grant funding for the project, the

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percentage set forth in the appropriation shall be the percentage of grant funding for allowable project costs as described in Section 661.701.

- c) The State share of project design costs shall be an allowance in accordance with the provisions of Appendix C of this Part.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)